

SECTION 2. – Definitions

5.138.030 Definitions.

“Age Verification Technology” means any device or software that can verify the identity and date of birth of the consumer for each retail transaction.

~~“Characterizing flavor” means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcohol beverage, herb, or spice.~~

~~“Flavored tobacco product” means any tobacco product that imparts a characterizing flavor.~~

“E-liquid” means a substance that:

- (1) contains nicotine;**
- (2) is intended to be vaporized and inhaled using a vapor product; and**
- (3) is a legal substance under the laws of this State and the laws of the United States;**

E-liquid does not include cannabis or CBD as defined under the laws of this State and the laws of the United States.

“Flavoring” means a food grade additive or synthetic flavoring substance that is used to add flavor and that is not prohibited by the federal Food and Drug Administration as an additive in e-liquids.

“Knowingly Attractive to Minors” means:

- (1) A cartoon-like fictional character that mimics characters primarily aimed at entertaining minors;**
- (2) Imitates or mimics trademarks or trade dress of products that are or have been primarily marketed towards minors;**
- (3) A symbol or celebrity image that is primarily used to market products to minors; or**
- (4) An image of individuals appearing 27 years of age or younger**

"Packaging or Container" means any receptacle that contains e-liquid or a vapor product.

"School" means any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

"Vapor product" means a powered vaporizer that converts e-liquid to a vapor intended for inhalation.

"Youth-oriented facility" means any establishment that caters to or provides services primarily intended for minors; that is patronized predominantly by minors; or where the people who regularly congregate or assemble are predominantly minors.

SECTION 3. – Tobacco License Density

Section 5.138.040 of the Sacramento City Code is amended to read as follows:
5.138.040 Requirement for tobacco retailer license.

A. It shall be unlawful for any person to act as a tobacco retailer without a valid license for each location at which tobacco retailing is to occur. No license will be issued to authorize tobacco retailing at other than a fixed location. No license will be issued for itinerant tobacco retailing or tobacco retailing from vehicles.

~~B. No license shall issue, and no existing license shall be renewed, to authorize tobacco retailing within 1,000 feet of a tobacco retailer already licensed pursuant to this chapter as measured by a straight line from the nearest point of the property line of the parcel on which the applicant's business is located to the nearest point of the property line of the parcel on which an existing licensee's business is located.~~

B. As of July 1, 2019, any new tobacco retail licensee, pursuant to Section 5.138.040 of the Sacramento City Code, shall obtain a Conditional Use Permit from the Planning and Design Commission

C. The city shall not issue any new tobacco retail license or authorize the transfer of any current tobacco retail license, pursuant to Section 5.138.040 of the Sacramento City Code, within 600 feet of a school, park, or other youth-oriented facility. This subsection (C) shall not apply to any tobacco retail license issued prior to the effective date of this ordinance.

~~C.~~ **D.** Nothing in this chapter shall be construed to grant any person obtaining a license any status or right other than the right to act as a tobacco retailer at the location in the

city identified on the face of the license, subject to compliance with all other applicable laws, regulations, and ordinances. Nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law, including, without limitation, any condition or limitation on indoor smoking made applicable to business establishments by California Labor Code section 6404.5.

SECTION 5. – Restrictions on Labeling, Marketing, and Packaging of Tobacco Products

Section 5.138.100 of the Sacramento City Code is amended to read as follows:
5.138.100 License violation.

~~A. It is a violation of a license for a licensee or his or her agents or employees to sell or offer for sale any flavored tobacco product. There is a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or its agents or employees has made a public statement or claim that the tobacco product has or produces a characterizing flavor, including, but not limited to, text, color, or images on the product's labeling or packaging that are used to expressly or impliedly communicate that a tobacco product has a characterizing flavor.~~

A. A tobacco product for sale by a licensee licensed under this Section shall meet the following requirements:

1. A tobacco product shall not be “knowingly attractive to minors”, as defined in Sections 5.138.030.

2. An e-liquid container must use a child-resistant cap that has the child resistant effectiveness set forth in the federal poison prevention packaging standards, 16 CFR 1700.15(b)(1).

3. An e-liquid container must use a tamper evident package. The tamper evident package feature must be designed to and remain intact when handled in a reasonable manner during the manufacture, distribution, and retail display of the e-liquid container.

4. The label on an e-liquid container must meet the nicotine addictiveness warning statement requirements set forth in 21 CFR 1143.3.

5. All retailers selling e-liquids shall display e-liquids behind a counter or in an enclosed display that is not accessible without the assistance of a sales representative.

B. It is a violation of a license for a licensee or his or her agents or employees to violate any local, state, or federal tobacco-related law.

SECTION 6. –Increased Penalties for Retailers

5.138.110 Suspension or revocation of license

A. In addition to any other remedy authorized by law, a license shall be suspended or revoked as provided in this section, if the city manager finds that the licensee or his or her agents or employees has or have violated any of the provisions of this chapter; provided, however, violations by a licensee at one location may not be accumulated against other locations of that same licensee, nor may violations accumulated against a prior licensee at a licensed location be accumulated against a new licensee at the same licensed location.

1. Upon a finding by the city manager of a first license violation within any five-year period, the licensee shall be a penalty of \$250. ~~shall be suspended for 30 days.~~
2. Upon a finding by the city manager of a second license violation within any five- year period, the licensee shall be a penalty of \$500. ~~shall be suspended for 90 days.~~
3. Upon a finding by the city manager of a third license violation within any five- year period, the licensee shall be a penalty of \$1,000. ~~shall be suspended for one year.~~
4. Upon a finding by the city manager of a fourth license violation within any five- year period, the license shall be revoked.

B. A license shall be suspended or revoked as provided in this section, if the city manager finds that the licensee or his or her agents or employees sells, gives, or in any way furnishes to another person who is under 21 years of age, any tobacco product or tobacco paraphernalia according to the following schedule:

1. A \$250 penalty for the first violation at the same location within a three-year period.

2. A \$2,500 penalty for the 2nd violation at the same location within a three-year period.

3. Revocation of the license for a third violation at the same location within a three-year period.

B. C. Notwithstanding section 5.138.110A, a license shall be revoked if the city manager finds that either one or both of the following conditions exist:

1. One or more of the bases for denial of a license under section 5.138.060A existed at the time application was made or at any time before the license issued.

2. The information contained in the license application, including supplemental information, if any, is found to be false in any material respect.

~~C.~~ D. In the event the city manager suspends or revokes a license, written notice of the suspension or revocation shall be served upon the licensee within five days of the suspension or revocation in the manner prescribed in section 5.138.060D. The notice shall contain:

1. A brief statement of the specific grounds for such suspension or revocation;
2. A statement that the licensee may appeal the suspension or revocation by submitting an appeal, in writing, in accordance with the provisions of section 5.138.120, to the city manager, within 10 calendar days of the date of service of the notice; and
3. A statement that the failure to appeal the notice of suspension or revocation will constitute a waiver of all right to an administrative appeal hearing, and the suspension or revocation will be final.

~~D.~~ E. A licensee for whom a license suspension is in effect, or whose license has been revoked, must cease all tobacco retailing and remove all tobacco products and tobacco paraphernalia from public view at the address that appears on the suspended or revoked license.

Add Section 12 – Requirement for ID Verification

5.138.040 Requirement for tobacco retailer license.

A. It shall be unlawful for any person to act as a tobacco retailer without first obtaining a license for each location at which tobacco retailing is to occur. No license will be issued to authorize tobacco retailing at other than a fixed location. No license will be issued for itinerant tobacco retailing or tobacco retailing from vehicles.

B. Every tobacco retail licensee shall obtain and use Age Verification Technology, as defined in Section 5.138.030, for each tobacco product purchase at his or her licensed location. Failure to adhere to this requirement shall constitute a violation pursuant to Section 5.138.110.

~~B.~~ C. Nothing in this chapter shall be construed to grant any person obtaining a license any status or right other than the right to act as a tobacco retailer at the location in the city identified on the face of the license, subject to compliance with all other applicable laws, regulations, and ordinances. Nothing in this chapter shall be construed to render

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inapplicable, supercede, or apply in lieu of any other provision of applicable law, including, without limitation, any condition or limitation on indoor smoking made applicable to business establishments by [Labor Code](#) Section 6404.5. (Ord. 2004-013 §

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